

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
ANDERSON DIVISION

Danny Roberts, #263846,

Petitioner,

v.

Collie Rushton, Warden of McCormick
Corr. Inst.; and Henry McMaster,
Attorney General State of South
Carolina,

Respondents.

C/A No. 8:04-22638-GRA

ORDER
(Written Opinion)

This matter is before this Court upon Petitioner's claim to seek habeas corpus relief pursuant to 28 U.S.C. § 2254. United States Magistrate Judge Bruce H. Hendricks issued a Report and Recommendation ("R&R") dated July 29, 2005, in which she recommended that Respondents' motion for summary judgment be denied, and Petitioner be given a new trial. Respondents filed their Objections to this R&R on August 12, 2005. That same day, Respondents received Petitioner's *pro se* request to dismiss his habeas corpus petition.

Pursuant to Federal Rule of Civil Procedure 41(a)(1) & (2), a plaintiff may not voluntarily dismiss his action without order of court after service of an answer or motion for summary judgment, unless a stipulation of dismissal is signed by all parties. Rule 41(a)(2) allows the court after this time to dismiss the action upon such terms as the court deems proper.

Respondents filed a Response to Petitioner's motion to dismiss, on August 16, 2005, stating they have no objection to the dismissal. "The effect of a voluntary dismissal without prejudice pursuant to Rule 41(a) 'is to render the proceedings a nullity and leave the parties as if the action had never been brought.'" *Smith v. Dowden*, 47 F.3d 940, 943 (8th Cir. 1995).

IT IS THEREFORE ORDERED that Petitioner's motion to dismiss is GRANTED and this action is DISMISSED without prejudice.

IT IS SO ORDERED.



G. ROSS ANDERSON, JR.
UNITED STATES DISTRICT JUDGE

Anderson, South Carolina

August 25, 2005.